

Medical Documentation, Sick Leave, FMLA, and Everything in Between

Presented By

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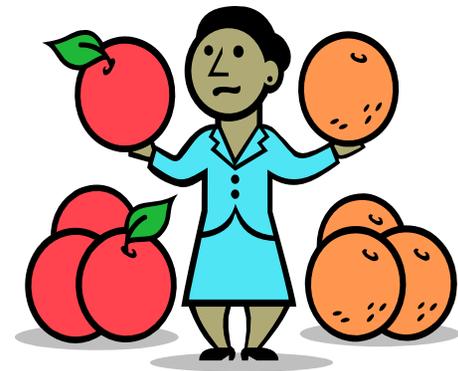
ABSENCE DUE TO ILLNESS

- ▶ Family and Medical Leave Act (FMLA) layered on top of existing sick leave provisions
- ▶ Sick leave rules are significantly different than FMLA rules
- ▶ Sick leave rules have changed significantly in the past few years
- ▶ Mastering which types of leave are applicable in different situations is complex



SICK LEAVE AND FMLA DIFFERENCES/SIMILARITIES

- What's the same?
 - Definition of health care provider
 - Definition of serious health condition
- What's different?
 - Definition of a year
 - Management's authority to approve or disapprove
 - Definition of a family member
 - Content of medical documentation
 - Management's ability to require medical documentation



FMLA LEGAL AND REGULATORY BASIS

- ▶ Family and Medical Leave Act of 1993 signed on 2/5/1993
- ▶ Title II of FMLA applies to most Federal employees
- ▶ Regulations at Subpart L of 5 CFR 630, sections 1201 through 1211
- ▶ OPM regulations follow Dept of Labor regulations at 29 CFR 825



LR & POLICY INTERSECTION

- ▶ Contracts/policies may provide additional protections or include provisions that control the process by which management makes decisions:
 - May grant additional time off beyond FMLA entitlement
 - May grant FMLA-like benefits for others than named family members

FMLA ENTITLEMENT

- **Entitlement to twelve weeks of *unpaid* leave for**
 - Birth of son or daughter and care for that child
 - Placement of a son or daughter for adoption or foster care
 - Serious personal medical condition
 - The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition
- **Entitlement applies to a year**
 - Year defined as any 12-month period

5 CFR 630.1203(a)

COVERAGE

- Most Federal employees are covered by Title II of the Act
 - Earn and use leave under 5 USC Chapter 63
- Those not covered by Title II:
 - USPS
 - Non-appropriated fund employees
 - Certain VA employees
 - Their agencies were to promulgate instructions under Title I

5 CFR 630.1201

COVERAGE - SERVICE

- In order to utilize FMLA an employee must have completed 12 months of service in other than a temporary or intermittent position
 - ➔ Must have been service as an employee who would have been covered by FMLA Title II, i. e. would earn and use leave under 5 USC 63



FMLA FAMILY MEMBER

- Son or daughter – biological, adopted or foster child, stepchild, legal ward under 18 or 18 or older and incapable of self-support
 - Self-support defined using activities related to daily living – must need assistance in three things such as grooming themselves/hygiene, using public transportation, eating
- Parent – biological parent or someone who stands or stood *in loco parentis*



5 CFR 630.1202

FMLA FAMILY MEMBER II

- Spouse – husband or wife pursuant to a legal union between one man and one woman
 - Includes common law marriage in those states where recognized
- Does not include same sex spouse even if recognized in state (See explanatory material in 12/5/96 final regs under “Definitions”)



Sick leave definition is different!



SERIOUS HEALTH CONDITION

- Illness, injury, impairment or condition that involves either inpatient care or continuing treatment
 - Inpatient care – overnight stay in medical facility

5 CFR 630.1202



SERIOUS HEALTH CONDITION II

➤ Continuing treatment

- Incapacity of more than three consecutive days that also involves treatment two or more times or regimen of treatment such as medication or therapy
- Incapacity due to pregnancy or prenatal care
- Incapacity due to chronic condition or incapacity that is permanent/long term but treatment is not effective
- Multiple treatments including recovery time

SERIOUS HEALTH CONDITION II

- Illness, injury, impairment or condition that involves either inpatient care or continuing treatment
- OPM examples: heart attacks, most cancers, back conditions requiring extensive therapy, appendicitis, pneumonia, emphysema, miscarriages, complications or illnesses related to pregnancy, prenatal care, childbirth and recovery from childbirth
- Also included: substance abuse treatment, providing hygienic care for someone unable to care for themselves, dialysis for kidney disease, physical therapy for severe arthritis



MORE ON SERIOUS HEALTH CONDITIONS



- Not a Serious Health Condition
 - Common colds, flu, earaches, minor ulcers, headaches (except migraines), allergies, cosmetic treatments except if inpatient hospital care is required
 - Routine examinations, regimen of treatment that includes taking over the counter medication, absence because of use of illegal substance unless in treatment, a condition for which cosmetic treatments are administered unless inpatient hospital care required or if there are complications

5 CFR 630.1202



HEALTH CARE PROVIDERS

5 CFR 630.1202

- Licensed Doctor of Medicine or Doctor of Osteopathy or a physician serving on active duty in uniformed services
- Provider of health services who is not an M.D., but is certified by a national organization and licensed by state to provide the service
- Health care provider in another country authorized to provide treatment by laws of that country
- Christian Science practitioner listed with First Church of Christ Scientist in Boston
(<http://www.spirituality.com/journal/directory.jhtml>)
- Native American recognized as a traditional healer



INTERMITTENT USE OF FMLA

- Leave may be used intermittently
 - Health condition itself may be intermittent
 - Employee may only be needed because care is also provided by other party
- Documentation from health care provider must include dates of planned treatment/period of recovery or likely duration and frequency of incapacity

5 CFR 630.1204

INTERMITTENT USE OF FMLA II

- If pattern of FMLA leave use does not match health care provider's projection may provide opportunity for recertification



REQUESTING FMLA LEAVE

- ▶ Employee invokes his/her entitlement by requesting FMLA leave
- ▶ If request is not clear or employee requests leave for something that could be a FMLA situation, management should clarify
- ▶ Employee should request leave 30 calendar days in advance of the need if foreseeable



5 CFR 630.1203(b)

REQUESTING FMLA LEAVE II

- May not be requested retroactively unless both employee and representative were incapacitated and unable to make request
- If incapacitated, request must be submitted in two workdays upon return to work



5 CFR 630.1203(b)

Substitution of paid leave also must be made prior to using the leave – 5 CFR 630.1205(e)

SUPPORTING FMLA REQUEST

- Agency must ask for medical information
- Medical information must include:
 - the date the serious health condition commenced
 - the probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition
 - the appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health provider

5 CFR 630.1207(b)

FMLA REQUEST II

- If it is a family member with the serious health condition, the medical information must include:
 - A statement that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance; and would benefit from the employee's care or presence, and
 - A statement from the employee about the care that he or she will provide and an estimate of the amount of time needed to care for that family member

5 CFR 630.1207(b)(4)

FMLA REQUEST III

➤ If it is the employee with the serious health condition, the medical information must include:

- A statement that the employee is not able to perform one or more of the essential functions of the position or requires medical treatment for a serious health condition
- Made based on employee info unless agency provides info



5 CFR 630.1207(b)(5)

REQUESTING FMLA - FORM

- ▶ OPM authorizes use of the Department of Labor Form WH-380
- ▶ Available on-line at:
<http://www.opm.gov/oca/leave/html/WH380CertificationOfHealthCareProvider1.pdf>
- ▶ Use provided memo
- ▶ Letter or other document from health care provider which provides the same information is acceptable

SUBMITTING CERTIFICATION

- ▶ 15 days from date of request to submit the requested medical documentation (5 CFR 630.1207(h))
- ▶ One 15-day extension authorized if needed
- ▶ If absence must begin before medical information can be obtained agency must grant provisional leave pending receipt of the medical information (5 CFR 630.1207(g))
- ▶ If provisional leave granted but medical documentation not submitted within 30-day period agency may change the approved FMLA leave to AWOL or some other type of leave (5 CFR 630.1207(i)).

FMLA CERTIFICATIONS

- FMLA leave for pregnancy, chronic conditions, or long-term conditions:
 - Agencies are authorized to require recertification every 30 days
 - Examples of chronic or long-term conditions: asthma, migraines, emphysema, and diabetes.
- FMLA leave for any other serious health condition and health care provider set a minimum period of incapacity:
 - Agency may not request recertification until that period of incapacity has passed.



CERTIFICATION EXCEPTIONS

- Recertification may be requested sooner than the 30-day period or set period of incapacity when:
 - The employee requests that the original leave period be extended
 - The circumstances in the original medical certificate change significantly
 - The agency receives information which casts doubt on the validity of the medical certification.

5 CFR 630.1207(j)

RECERTIFICATION CAUTION

- Should be used when there is a real question about the most recent medical report and not just as a matter of course
- Postal Service class action on use of recertification
 - *Cyncar v. United States Postal Service*, EEOC Appeal No. 0720030111 (February 1, 2007), *request for reconsideration denied*, EEOC Request No. 0520070348 (May 1, 2007)
 - Cyncar and class members allege Postal Service unreasonably required re-certification of FMLA requests and routinely required second and third opinion procedures to support FMLA requests of disabled employees but not for others
- Read about case from the complainants' viewpoint:
<http://www.postalflame.org/enter.html>

SUBSTITUTION OF PAID LEAVE

- Understanding substitution of paid leave under FMLA requires understanding the limitations on annual and sick leave



SUBSTITUTED LEAVE

SUBSTITUTION OF PAID LEAVE

- ▶ Under FMLA an employee may substitute available paid leave for all or any portion of an approved FMLA absence
- ▶ Paid leave includes
 - Accumulated annual or sick leave
 - Advanced annual and/or sick leave
 - Leave made available through the leave transfer program
 - Compensatory time and credit hours may not be substituted
(See final regs dated 12/5/96 under “Substitution of Paid Leave”)
- ▶ Substitution of leave must be consistent with current laws/regulations governing the granting and use of that leave

5 CFR 630.1205



LEGAL/REGULATORY BASIS

- ▶ Annual and Sick Leave – authorized in 5 USC Chapter 63
- ▶ OPM regulations at 5 CFR 630
- ▶ Union contract provisions
- ▶ Amounts of annual and sick leave earned and used are determined based on a leave year (defined in 5 CFR 630.201)

SICK LEAVE



Granted when the employee:

- ▶ Receives medical, dental, or optical examination or treatment
- ▶ Is incapacitated for duty by physical or mental illness, injury, pregnancy, or childbirth
- ▶ Provides care for a family member as a result of physical or mental illness; injury, pregnancy; childbirth; or medical, dental, or optical examination or treatment
- ▶ Makes arrangements necessitated by the death of a family member or attends family member's funeral
- ▶ Has been medically determined to have been exposed to a communicable disease and presence at work would jeopardize health of others
- ▶ Must be absent from duty for purposes relating to the adoption of a child

5 CFR 630.401

INCAPACITATION

- Sick leave is authorized for the period of incapacitation
- Incapacitation means rendered powerless or motionless



FAMILY CARE

- ▶ Added by Federal Employees Family Friendly Leave Act of 1994
- ▶ Provisions implemented by regulation - last amended 9/18/2006
- ▶ Scheduled in advance if possible



5 CFR 630.401(b)

FAMILY MEMBER UNDER SICK LEAVE REGULATIONS



- Spouse and his/her parents
- Children, including adopted children, and their spouses
- Parents

- Brothers and sisters, and their spouses
- Any individual related by blood or affinity whose close association with the employee is equivalent of a family relationship
- (Note: OPM proposed regulations to include grandparents, grandchildren, & domestic partners in September 2009 – watch for updates)

5 CFR 630.201(b)

FAMILY MEMBER COMPARISON

FMLA	Sick Leave
spouse	spouse, and parents thereof
children up to 18 or children over 18 and incapable of self-care	children and spouses thereof
parents	parents
	brothers and sisters, and spouses thereof
	any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

FAMILY CARE LIMITS



- Non-serious health conditions - limited to 13 workdays (104 hours) per leave year (bereavement in same allocation)
- Serious health condition – limited to 480 hours in a leave year

SERIOUS HEALTH CONDITIONS & SICK LEAVE

- Limitations appear in 5 CFR 630.401(d)
 - 480 hours (12 weeks) per leave year if available
 - Previous use of any portion of 13-day allocation for other than serious health conditions or bereavement deducted from 480
 - 30 days may be advanced (240 hours) at agency discretion (5 CFR 630.401(f))



ADOPTION

- Covers activities necessary for adoption to proceed which may differ among jurisdictions/agencies
- Examples:
 - Appointments with adoption agencies, social workers, and attorneys
 - Court proceedings
 - Required travel
 - Time adoptive parents are ordered/required by the adoption agency/court to care for the adopted child
- Adoptive parents who **voluntarily** choose to be absent from work to bond with or care for an adopted child may not use sick leave
(See OPM Adoption Benefits Guide at www.opm.gov)



Amount not subject to 13-day sick leave limit or
480-hour sick leave limit

A FEW WORDS ABOUT CHILDBIRTH

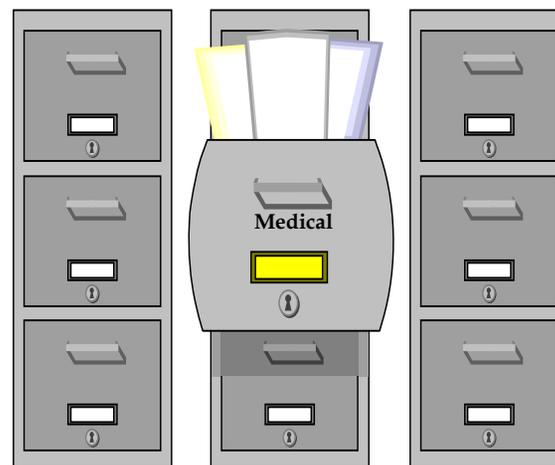
- Mother may use sick leave for medical appointments, hospitalization, and her period of incapacitation following childbirth (normally 6 weeks)
- Father may use up to 480 hours to accompany the mother to prenatal appointments, to be with her during her period of hospitalization, and/or to care for her during her recovery period
- Both parents may use accrued annual leave or LWOP to be absent from work to bond with or care for a healthy newborn



<http://www.opm.gov/oca/leave/html/childbirthfs.asp>

OBTAINING MEDICAL INFORMATION

Medical examinations/documentation provide information about health status



. . . . to assist management in making employment decisions – including decisions about leave

MEDICAL DOCUMENTATION

- The burden is on the employee to obtain medical information to support leave request
- Medical documentation
 - Must be based on medical exam at or around the time of the situation in question
 - Must outline the effect of the condition on ability to perform
 - Must be more than conclusory

MEDICAL DOCUMENTATION

➤ Definition in 5 CFR 339.104

- History
- Clinical findings
- Diagnosis
- Prognosis
- Impact on overall health
- Likelihood of sudden or subtle incapacitation
- Is condition static or well stabilized?

➤ Medical documentation may be requested to support *sick leave* requests



GRANTING SICK LEAVE

5 CFR 630.401(a) states that sick leave must be granted for one of the authorized purposes discussed in the previous slides –

- subject to any limitations on how much may be used for certain purposes

With the understanding that the employee:

- ▶ Followed leave procedures
- ▶ Produced acceptable documentation where required
- ▶ Has accrued sick leave to his/her credit



DISCRETIONARY SICK LEAVE

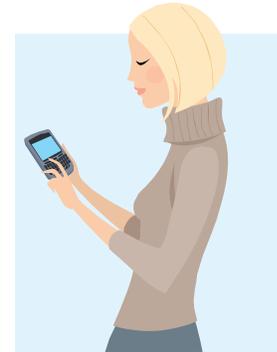
Agency policies generally provide that approval of sick leave is discretionary when any of the following conditions exist:



- The employee does not follow leave procedures
- The employee does not produce acceptable documentation as required
- Abuse or fraud is suspected or evident
- The employee does not have any sick leave accrued

SICK LEAVE ABUSE

- Sick leave abuse is using sick leave when it is not justified
- Examples:
 - Calling in “sick” when not incapacitated
 - Claiming family care when not actually providing care, but running errands/babysitting
- Requiring medical certificate may stop abuse
- May not be imposed for FMLA absences
 - OPM website: <https://www.opm.gov/oca/leave/html/LeavQA.asp>



FMLA REQUESTS AND SUBSTITUTION OF PAID LEAVE

➤ Two questions:

- Is the absence covered by FMLA?
- If so, is the employee eligible under law and regulation to use the type of leave and the amount of leave requested?



BOTTOM LINE



- ▶ If FMLA request is approved and the grant of leave is permissible under law and regulation, then it **MUST** be granted
- ▶ Normally annual leave is granted by management when workload permits –
- ▶ - however, under FMLA, annual leave must be granted to substitute for FMLA unpaid leave

SUBSTITUTION OF SICK LEAVE UNDER FMLA



- Sick leave limits apply:
 - 480 hours (12 weeks) per leave year
 - Previous use of any portion of 13-day allocation deducted from 480 hour limit
- FMLA entitlement is 480 unpaid hours
- “Year” is different for FMLA and sick leave



ON THE LEGISLATIVE FRONT

- May be introduced again!
- Bill introduced on 1/22/2009 to provide that 4 of the 12 weeks of parental leave shall be paid without charge to leave
 - H.R. 626 introduced by Rep. Carolyn Maloney
 - Also introduced in 2008
 - Allows OPM to increase to 8 weeks by regulation
 - Last year's version would require invocation of FMLA

BACK TO FMLA

WHAT LEAVE BENEFITS FOR NEW PARENTS ARE IN FMLA?

- Each parent is eligible for 12 weeks of unpaid leave under FMLA Title II for birth of son or daughter *and care of that son or daughter*
- Also applies to placement for adoption or foster care
- Entitlement runs one year from date of birth/placement
- Parental leave under FMLA may not be used intermittently unless agency agrees
- Substitution of paid leave must meet legal and regulatory requirements



LEAVE STACKING

- ▶ Leave “stacking” means that an employee uses any or all of other available leave for a FMLA type situation – and then invokes FMLA for the same purpose
- ▶ Clarifying whether the employee wants to invoke FMLA for the initial absence may help prevent leave “stacking”



QUESTIONS ABOUT FMLA MEDICAL DOCUMENTATION



- Supervisor or HR Specialist may not contact the health care provider for additional information
 - Only a medical practitioner acting on behalf of the agency may do so with the employee's consent (5 CFR 630.1207(c))
(Note possible change here)
- Second and third opinion procedures sole method for resolving disputes
 - Apply to employee and family member
 - Exams at agency's expense

SECOND OPINIONS

- Second opinion
 - Agency selects health care provider
 - May not choose an agency employee or provider under agency's administrative oversight (except in underserved areas)

5 CFR 630.1207(d)

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THIRD OPINIONS

- If there are differences in the original and second opinion conclusions, may request third opinion
- Third opinion
 - Employee and agency have to jointly agree on the selection of health care provider
 - Provider who gave the first opinion may not provide the third
 - The third opinion is binding on the agency and employee

5 CFR 630.1207(e)

3

FMLA – 2008 ADDITIONS

- ▶ Added by National Defense Authorization Acts (NDAA) for FY 2008 and FY 2010
- ▶ Family members of a covered servicemember who suffers a serious injury or illness on active duty are entitled to **26 weeks** of leave without pay to provide care (2010 - includes conditions that develop within five years of end of military service)
- ▶ FMLA for care of servicemember is one-time only – unless there is another servicemember who meets the family member definitions or the same service member is re-deployed and injured again



FMLA – MILITARY PURPOSES

- Applies to spouse, child, parent and **next of kin** (nearest blood relative)
- “Serious injury or illness” means injury or illness incurred in line of duty/on active duty that may render the member medically unfit to perform his/her duties
- DoL regs for Title I effective 01/09; OPM draft regulations issued 08/26/09 (74 FR 43064)



FMLA – QUALIFYING EXIGENCIES



- Added by NDAA for FY 2010
- Provides another event for regular FMLA coverage (12 weeks in a 12-month period)
- Allows employee time off to participate in military activities or prepare for deployment or return of servicemember
- Examples:
 - Military ceremonies and events
 - Making or updating financial or legal arrangements
 - Taking five days to spend time with servicemember on rest and recuperation leave
 - Making alternate child care arrangements
 - Prepare for deployment

FMLA, ACCOMMODATION, AND ADVERSE ACTIONS

FMLA AND REASONABLE ACCOMMODATION

▶ Entitlements may overlap

→ Some serious health conditions also meet the definition of disability

↳ Cancer, stroke, heart attack

→ Some serious health conditions do not

↳ Pregnancy (unless complications result in disability), broken leg, hernia



<http://www.eeoc.gov/policy/docs/fmlaada.html>

DOES A FMLA REQUEST STOP A PENDING 432 OR 752 ACTION?

- An employee's decision to invoke FMLA leave under does not prohibit an agency from proceeding with appropriate actions under part 432 or part 752
- Principle also applies to reduction-in-force actions

5 CFR 630.1208(k)

WHAT IF ABSENCE DUE TO ILLNESS BECOMES EXCESSIVE?

- ▶ *Remember –FMLA absences not included in “excessive”*
- ▶ Excessive unpaid absence outside of FMLA may be actionable



REASONABLE ACCOMMODATION

- ADA requires employers to modify attendance policies as a reasonable accommodation, absent undue hardship
- Request for leave may be an accommodation request
- Employee should articulate accommodation that will enable him/her to meet essential job requirements

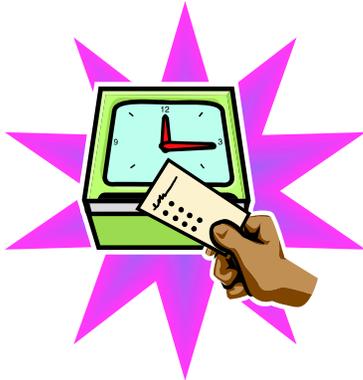
MUST AGENCIES ACCOMMODATE UNRELIABLE ATTENDANCE?

- ▶ EEOC Guidance:
 - <http://www.eeoc.gov/facts/performance-conduct.html#issues>
- ▶ Employers are not required to:
 - Completely exempt an employee from time and attendance requirements
 - Grant open-ended schedules
 - Accept irregular, unreliable attendance
 - Accommodate repeated instances of tardiness or absenteeism that occur with some frequency, over an extended period of time and often without advance notice

UNRELIABLE ATTENDANCE AND UNDUE HARDSHIP

- More EEOC Guidance
- Chronic, frequent, and unpredictable nature of such absences may put a strain on the employer's operations because:
 - an inability to ensure a sufficient number of employees to accomplish the work required;
 - a failure to meet work goals or to serve customers/clients adequately;
 - a need to shift work to other employees, thus preventing them from doing their own work or imposing significant additional burdens on them
 - incurring significant additional costs when other employees work overtime or when temporary workers must be hired

CAN ADVERSE ACTIONS BE TAKEN BASED ON APPROVED LEAVE?



- General rule – agency may not take an adverse action against an employee based on approved leave (Webb v. USPS, 82 FMSR 5137)
- Exception – Excessive Absence (Cook v. Army, 84 FMSR 5013)
- An agency may take an adverse action based on excessive use of leave without pay where
 - the record shows that the employee was absent for compelling reasons beyond her control so that the agency's approval or disapproval of leave was immaterial

MORE ON EXCESSIVE LEAVE ACTIONS

- ▶ Excessive leave continued:
 - the absences continued beyond a reasonable time, and the employee was warned that adverse action might be initiated unless she became available for duty on a regular basis, and
 - the agency shows that the position needed to be filled by an employee available for duty on a regular basis
- ▶ Use of leave under FMLA does not preclude a charge of excessive absence, when the absence exceeds the 12-week statutory period of absence covered by the FMLA (*Cole, Administrator of the Estate of Pickering v. VA*, 98 FMSR 5031)

EXCESSIVE ABSENCE

- ▶ Action is normally taken when there is no end in sight to the absence
- ▶ 252 $\frac{3}{4}$ hours of LWOP and 80 $\frac{3}{4}$ hours AWOL for a total of 333 $\frac{1}{2}$ hours of unscheduled absences in a six month period was sufficient for removal of a GS-4 Medical Support Assistant in an Army Hospital (*Gartner v. Army*, 107 FMSR 200)



SEPARATION DISABILITY

- Employee physically or mentally unable to meet job requirements
- Removal is based on assessment supported by medical information
- Impact on performance or conduct is not the basis of the action, even though they exist – action is taken on inability to perform

IS AN EMPLOYEE SEPARATED BASED ON DISABILITY ELIGIBLE FOR RETIREMENT?

➤ Discontinued Service

- Qualifies for a reduced annuity with 50 & 20 or 25 and any age/five years service, etc.
- Employee must have ***received a removal notice*** for separation disability - *not misconduct* - (CSRS and FERS Handbook, (CSRS) 44A2.1-9)
- Involuntary action - Nature of action is “Resignation ILIA” - in lieu of involuntary action
- Can’t settle for clean record: *Komiskey v Army*, 96 FMSR 5210
- OPM guidance:
<https://www.opm.gov/settlementguidelines/>



FMLA -THIRD PARTY REVIEW

- OPM has jurisdiction over implementation of FMLA for Title II employees
- MSPB will review an agency's leave related charge in light of the employee's rights under FMLA
 - If an adverse action is predicated on the agency's erroneous interference with an employee's rights under FMLA, such adverse action is in violation of law, and it may not be sustained.”
(Ramey v. Postal Service, 96 FMSR 5184)



MORE FMLA THIRD PARTY REVIEW



➤ More on MSPB

→ If the facts in the record implicate FMLA leave relative to a leave-related charge, the Board will consider and apply FMLA without shifting the burden of proof to the appellant (*Ramey v. Postal Service*)

➤ EEOC

→ EEOC will review claims that FMLA leave was denied in a discriminatory manner (*Tyndall v. Postal Service*, 101 FEOR 19480)

IMPORTANT HOLDINGS

- Medical information submitted after the fact with an appeal will not be entertained (*Dias v. VA*)
 - Retroactive requests may not be approved
 - Second and third opinion procedures provide mechanism for resolving disputes about sufficiency of medical certification
- Excessive absence is actionable (*Cole v. VA*, *Young v. VA*)
 - Cole - Absence of 19 months – no return to duty date
 - “Because the appellant’s unpaid leave lasted for more than nineteen months, the FMLA does not preclude sustaining the charge of excessive use of unpaid leave here.”

IMPORTANT HOLDINGS II



- Family care is “care” - not babysitting/running errands (*Khourdaji v. Army*)
 - Medical documentation must substantiate need for care of the family member who is ill
- Serious health condition not substantiated (*Jeffries v. Navy*)
 - Medical documentation showed daughter had numerous bouts of bronchitis and a tonsillectomy, but did not establish a serious health condition

CAUTION

- ▶ When reviewing MSPB cases on attendance-related issues, be careful of relying on decisions from the U. S. Postal Service 
- ▶ USPS can take action on failure to maintain a regular work schedule even when leave was approved – generally not applicable to other agencies
- ▶ Same caution applies to FMLA cases from USPS, VA Title 38 employees under Title I

Thank you for your participation!

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